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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HONORABLE JEFFREY T. MILLER)

UNITED STATES OF AMERICA,)
)
Plaintiff,)
v.)
BASAALY MOALIN; MOHAMED)
MOHAMUD; ISSA DOREH; and)
AHMED NASIR TAALIL)
MOHAMUD ,)
Defendants.)

Case No. 10CR4246-JM

Date: September 30, 2013
Time: 9:00 a.m.

NOTICE OF MOTION AND
EX PARTE MOTION FOR AN
APPLICATION TO CONTINUE
SENTENCING AND FOR
A SCHEDULING ORDER

TO: LAURA E. DUFFY, UNITED STATES ATTORNEY, AND
WILLIAM COLE, ASSISTANT UNITED STATES ATTORNEY
CAROLINE PINEDA HAN, ASSISTANT UNITED STATES ATTORNEY

PLEASE TAKE NOTICE that defendants BASAALY MOALIN, MOHAMED
MOHAMUD, ISSA DOREH, AND AHMED NASIR TAALIL MOHAMUD respectfully
move, before the Honorable Jeffrey T. Miller, United States District Judge for the
Southern District of California, for an order continuing the sentencings of the defendants
scheduled for September 16, 2013, to September 30, 2013, and also calendaring a Rule
33 motion hearing for September 30, 2013, in accordance with the following briefing
schedule (as directed by the Court in its August 29, 2013, Order, Dkt. # 340):

a. Defendants' Rule 33 motions to be filed by September 5, 2013;

- b. Government's Response to Rule 33 motions to be filed by September 18, 2013;
- c. Defendants' Reply to Rule 33 motions to be filed by September 23, 2013; and
- d. Sentencing Memorandums for all parties to be filed by September 16, 2013, two weeks before the Rule 33/sentencing hearing date.

It is respectfully requested that the Court grant this motion to continue sentencing and for a scheduling order for the following reasons:

- (1) due to the fact that defense counsel plan to file motions for a new trial, pursuant to Rule 33, Fed.R.Crim.P. – namely regarding the impact and legal effect of the disclosure by U.S. government officials that defendant Basaaly Moalin was subject to electronic surveillance programs conducted by the National Security Agency, and that information captured as a result led to the investigation in this case; and
- (2) regarding the substance of the Rule 33 motion, while defendants challenged any electronic surveillance (and physical searches) pursuant to the Foreign Intelligence Surveillance Act ("FISA"), they were never apprised of, and therefore never had the opportunity to brief, any interception or collection of data by the National Security Agency ("NSA"). FISA surveillance and searches are conducted by the Federal Bureau of Investigation ("FBI"), and cover domestic communications. The NSA collection/interception involves international communications, some of which involved persons (*i.e.*, Mr. Moalin, a U.S. citizen) in the U.S. The legality of the latter collection has neither been briefed in this case nor decided by any court (to defendants' knowledge). To the extent there are decisions on the issue (by the Foreign Intelligence Surveillance Court), they have not been provided to, or made accessible to, defense counsel in this case. It is respectfully submitted that, in light of the recent disclosures, defendants should be able to address this

1 important constitutional issue.

2 The government, through Assistant United States Attorney William Cole, has
3 informed counsel that it consents to the continuance and proposed briefing schedule but
4 will file a response after the filing of this motion to address the characterization of the
5 issues that will be the subject of the new trial motion.

6
7 Respectfully Submitted,

8 DATED: August 30, 2013

9 /s/ Joshua L. Dratel
JOSHUA L. DRATEL
Attorney for Basaaly Moalin

10 DATED: August 30, 2013

11 /s/ Linda Moreno
LINDA MORENO
Attorney for Mohamed Mohamud

12 DATED: August 30, 2013

13 /s/ Ahmed Ghappour
AHMED GHAPPOUR
Attorney for Issa Doreh

14 DATED: August 30, 2013

15 /s/ Thomas Durkin
THOMAS DURKIN
Attorney for Ahmed Nasir Taalil Mohamud
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